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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

MAILED

Application Number: 09/802,638
Filing Date: March 09, 2001
Appellant(s): KITSUKAWA, TADAMASA

JUN 05 2006

Technology Center 2600

John L. Rogitz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 3, 2006 appealing from the Office action mailed January 11, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

09/834,511, 09/840,327, 09/839,000, and 09/840,437.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct in that no amendments are outstanding or have been filed after the final rejection.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,914,746	MATTHEWS ET AL.	06-1999
6,133,910	STINEBRUNER	10-2000
6,637,027	BRESLAUER ET AL.	10-2003
5,289,271	WATSON	02-1994
2004/0249726	LINEHAN	12-2004
6,584,613	DUNN ET AL.	06-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

- 1. Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matthews, III et al in view of Stinebruner (US Pat No 6,133,910) and in further view of Breslauer et al. (US Pat No 6,637,027).**

In regard to claim 1, Matthews discloses a subscriber interface for maintaining a virtual channel table having entries for a plurality of virtual channel numbers. The claimed step of "establishing an access restriction table, the access restriction table including plural virtual channels" is met by Figure 2, Item 32. "STB 10 includes means for associating each virtual channel number with a program from headend 12. In the described embodiment, such means comprises a virtual channel table 32 having entries for a plurality of virtual channel numbers. An entry for a particular virtual channel number includes a designation of an available program from the headend which is to be associated with the virtual channel number" (Col 4, Lines 43-50). The claimed step of "making the access restriction table accessible to the television" is met by Figure 3. "FIG. 3 is a diagrammatic illustration of virtual channel table 32. In the example given, table 32 contains 500 entries, for virtual channel numbers 1 through 500. The channels are arranged in order. A viewer can increment or decrement the virtual channel number to move or "surf" between channels. When incrementing above the last virtual channel number, the first entry becomes current. When decrementing below the first virtual channel number, the last entry becomes current" (Col 4, Lines 51-59). The claimed step of "selectively enabling a consumer to access a Web site address using the interactive television by selecting a virtual channel" is met by Figure 3. "Virtual channels 4, 121, 122, and 500 are associated with other illustrated examples of executable applications 46 which, when selected, are to be executed at STB 10" (Col 5, Lines 6-9). The Matthews reference fails to explicitly disclose "setting a restriction flag on each entry in the table; the flag indicating whether content associated with the address of a

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selected virtual channel can be displayed". Stinebruner teaches "setting a restriction flag on each entry in the table; the flag indicating whether content associated with the address of a selected virtual channel can be displayed" so as to allow parents to control the content that their child accesses. Each virtual channel has associated with it at least a source indicator and a channel indicator which represent the source to view and the particular channel to view on that source. Additional information, e.g., a channel identifier (which could represent a textual description of the channel), a parental lock flag, among others, may also be associated with a virtual channel" (Col 5, Lines 49-55). Consequently, it would have been obvious to one of ordinary skill in the art to implement Matthews with "setting a restriction flag on each entry in the table; the flag indicating whether content associated with the address of a selected virtual channel can be displayed" for the stated advantage. Matthews discloses virtual channel correlating to *online* services (see Col 2, Lines 32-37). The reference, however, is silent with respect to the online services being a web site. Breslauer teaches the inclusion websites in an access control system so prevent the unauthorized access inappropriate material from multiple sources (See Col 4, Lines 1-25; Col 8, Lines 20-28). Consequently, it would have been obvious to one of ordinary skill in the art to implement Matthews with web sites for the stated advantage.

Claim 6 is met by that discussed for claim 1.

2. Claims 2 and 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matthews, III et al in view of Breslauer et al.

In regard to claim 2, Matthews discloses generating a table correlating online services with respective virtual channel numbers. "STB 10 includes means for associating each virtual channel number with a program from headend 12. In the described embodiment, such means comprises a virtual channel table 32 having entries for a plurality of virtual channel numbers. An entry for a particular virtual channel number includes a designation of an available program from the headend which is to be associated with the virtual channel number" (Col 4, Lines 43-50). "FIG. 3 is a diagrammatic illustration of virtual channel table 32. In the example given, table 32 contains 500 entries, for virtual channel numbers 1 through 500. The channels are arranged in order. A viewer can increment or decrement the virtual channel number to move or "surf" between channels. When incrementing above the last virtual channel number, the first entry becomes current. When decrementing below the first virtual channel number, the last entry becomes current" (Col 4, Lines 51-59). The reference discloses the step of "accessing the table to selectively retrieve the address associated with the virtual channel number, such that content associated with the address can be displayed on the television" (see Figure 3). "Virtual channels 4, 121, 122, and 500 are associated with other illustrated examples of executable applications 46 which, when selected, are to be executed at STB 10" (Col 5, Lines 6-9). Further, "FIG. 3 is a diagrammatic illustration of virtual channel table 32. In the example given, table 32 contains 500 entries, for virtual channel numbers 1 through 500. The channels are arranged in order. A viewer can increment or decrement the virtual channel number to move or "surf" between channels. When incrementing above the last virtual channel

number, the first entry becomes current. When decrementing below the first virtual channel number, the last entry becomes current" (Col 4, Lines 51-59). With respect to the "at least one virtual channel number is a telephone number", the applicant specification states "[a]s shown in Table 1, the virtual channel number can be a number familiar to the content owner, e.g., the content owner's phone number. The table can be generated by the ITV system server 18 and cached in the memory 44 or streamed as needed to the ITV 22" (Page 13). Matthews discloses the customization of the channel numbers, where the users is operable to change the number to a familiar number, as would include telephone numbers. Matthews discloses virtual channel correlating to *online* services (see Col 2, Lines 32-37). The reference, however, is silent with respect to the online services being a web site. Breslauer teaches the inclusion websites in an access control system so as to prevent the unauthorized access to inappropriate material from multiple sources (See Col 4, Lines 1-25; Col 8, Lines 20-28). Consequently, it would have been obvious to one of ordinary skill in the art to implement Matthews with web sites for the stated advantage.

In regard to claim 4, Matthews discloses that the table is stored at the television (see Col 4, Lines 1-8 and 22-24).

In regard to claim 5, Matthews fails to disclose the table being stored at the head end. Official notice is taken that it is notoriously well known in the art to maintain client information, such as a table, at the head end so as to lessen the processing power required at the set top box. Consequently, it would have been obvious to one of

ordinary skill in the art to implement Matthews with the table being stored at the head end for the stated advantage.

3. Claims 7 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matthews in view of Breslauer et al. and in further view of Watson (US Pat No 5,289,271).

In regard to claim 7, Matthews discloses at least on server having online services being associated with a respective virtual channel number (see Figures 2 and 3). "STB 10 includes means for associating each virtual channel number with a program from headend 12. In the described embodiment, such means comprises a virtual channel table 32 having entries for a plurality of virtual channel numbers. An entry for a particular virtual channel number includes a designation of an available program from the headend which is to be associated with the virtual channel number" (Col 4, Lines 43-50). Further, "STB 10 is used in conjunction with an audio/video display device or television receiver 14 and a hand-held remote control unit or infra-red keypad 16. One environment for the invention is in a hybrid fiber-optic/coax cable distribution system employing digital switching technologies such as asynchronous transfer mode (ATM) for bi-directional communications with individual subscribers. The headend in such a system is capable of supplying a number of different services or programs, ranging from traditional broadcast television, to movies-on-demand, to online shopping, banking, and information services" (Col 2-3, Lines 61-8). The reference discloses at least on interactive television (see Figure 1), the interactive television system server including a table for selectively allowing access to online service using the interactive television.

"FIG. 3 is a diagrammatic illustration of virtual channel table 32. In the example given, table 32 contains 500 entries, for virtual channel numbers 1 through 500. The channels are arranged in order. A viewer can increment or decrement the virtual channel number to move or "surf" between channels. When incrementing above the last virtual channel number, the first entry becomes current. When decrementing below the first virtual channel number, the last entry becomes current" (Col 4, Lines 51-59). Further, "Virtual channels 4, 121, 122, and 500 are associated with other illustrated examples of executable applications 46 which, when selected, are to be executed at STB 10" (Col 5, Lines 6-9). Matthews discloses virtual channel correlating to *online* services (see Col 2, Lines 32-37). The reference, however, is silent with respect to the online services being a web site. Breslauer teaches the inclusion websites in an access control system so prevent the unauthorized access inappropriate material from multiple sources (See Col 4, Lines 1-25; Col 8, Lines 20-28). Consequently, it would have been obvious to one of ordinary skill in the art to implement Matthews with web sites for the stated advantage. The aforementioned combined teaching fails to explicitly disclose recording a portion of the content accessed and a time of access record and billing the customer based on the on the record. Watson teaches disclose recording a portion of the content accessed and a time of access record and billing the customer based on the on the record so as to enable subscribers to be charged a fee based upon their actual usage rather than a flat rate. "The invention is an apparatus for (1) recording the specific channels to which the device is tuned; and (2) the periods of time for which it is tuned to each respective channel; and (3) for periodically reporting the information, in time units

allocated to each channel, to the originator of the cable signal; (4) all without participation by the individual cable user; and (5) without the necessity of intrusion into the individual turning circuit" (Col 3, Lines 54-61). Consequently, it would have been obvious to one of ordinary skill in the art to implement the combined teaching with recording a portion of the content accessed and a time of access record and billing the customer based on the on the record for the stated advantage.

Claims 9 and 10 are met by that discussed above for claim 7.

In regard to claim 11, combined teaching discloses that the access record may be used for billing or the polling of subscribers. Watson is silent with respect to determining whether the information is for private or public viewing. However, it is submitted that it would have been obvious to one of ordinary skill in the art to determine whether the information is for private or public viewing so as to ensure the privacy of the subscriber.

4. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matthews in view of Watson and further view of Linehan (US Pat Pub No 2004/0249726).

In regard to claim 12, Matthews discloses a subscriber interface for maintaining a virtual channel table having entries for a plurality of virtual channel numbers. The recitation of a "method for correlating plural Web site addresses to plural virtual channels, comprising the acts of:" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a

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structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). The claimed step of "providing at least one correlation table stored in an interactive television" is met by Figure 2, Item 32. "STB 10 includes means for associating each virtual channel number with a program from headend 12. In the described embodiment, such means comprises a virtual channel table 32 having entries for a plurality of virtual channel numbers. An entry for a particular virtual channel number includes a designation of an available program from the headend which is to be associated with the virtual channel number" (Col 4, Lines 43-50). The aforementioned combined teaching fails to explicitly disclose recording a portion of the content accessed and a time of access record and billing the customer based on the on the record. Watson teaches disclose recording a portion of the content accessed and a time of access record and billing the customer based on the on the record so as to enable subscribers to be charged a fee based upon their actual usage rather than a flat rate. "The invention is an apparatus for (1) recording the specific channels to which the device is tuned; and (2) the periods of time for which it is tuned to each respective channel; and (3) for periodically reporting the information, in time units allocated to each channel, to the originator of the cable signal; (4) all without participation by the individual cable user; and (5) without the necessity of intrusion into the individual turning circuit" (Col 3, Lines 54-61). Consequently, it would have been obvious to one of ordinary skill in the art to implement the combined teaching with

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recording a portion of the content accessed and a time of access record and billing the customer based on the on the record for the stated advantage. Linehan teaches discriminating between public sites and private sites so as to allow the cable company to charge a merchant web site (See Paragraph 0033). The billing is based on a user making a purchase on a merchant web sit, which discriminates it, with respect to billing. Consequently, it would have been obvious to one of ordinary skill in the art to implement the combined teaching with discriminating between public sites and private sites for the stated advantage.

In regard to claim 13, Matthews discloses a virtual channel correlating to an online service. The reference, however, is silent with respect to the online services being a web site (with a corresponding address). Official notice is taken that is notoriously well know in the art for an online services to use web sites so as to efficiently reach a large number of customers. Consequently, it would have been obvious to one of ordinary skill in the art to implement Matthews with web sites for the stated advantage.

In regard to claim 14, Matthews discloses that at least one virtual channel number is established by a consumer. "In the exemplary embodiment of the invention described herein, the viewer is involved in setting up and maintaining a channel line-up in the virtual channel table--the viewer can change the mapping of virtual channel numbers to available programs" (Col 5, Lines 44-49).

(10) Response to Argument

Only those arguments raised by the appellant pursuant to the issues on appeal and directed towards the interpretation of particular claim limitations have been considered and addressed by the examiner. Any further arguments, that the appellant could have made concerning other claim limitations and/or other rational for a prima facie case of obviousness having not been made (ex. teaching away, long standing need, etc.) are considered as having been conceded by the appellant for the basis of this appeal and are not being subsequently addressed by the examiner for the Board's consideration.

(a) – Rejection using the combination of Matthews, III et al., Stinebruner, Breslauer et al.

As set forth in the rejection Matthews discloses a subscriber interface for maintaining a virtual channel table having entries for a plurality of virtual channel numbers. "The subscriber interface unit has a channel selector which maintains a current virtual channel number and which is responsive to commands by a human viewer to change the current virtual channel number. When a virtual channel is selected, the subscriber interface unit requests associated program from the remote headend and presents it on the video display device" (Abstract).

As set forth in the rejection Stinebruner discloses the use of parental lock flag in a virtual channel system. "A video system utilizes a "virtual tuner" that integrates signals from multiple video sources to provide a plurality of "virtual channels", each of

which has both a video source and a channel associated with it. When a virtual channel is selected, the correct video source is selected and tuned to the correct channel automatically" (Abstract).

As set forth in the rejection Breslauer discloses the use of web sites/pages in a multimedia access control system. "A multimedia system is described that is capable of presenting multimedia segments including television broadcasts, radio broadcasts, stored video information, stored audio information, and Web pages. The multimedia system includes a conditional access manager which is a common interface between the multimedia system and a number of conditional access providers even if the conditional access providers follow different interface standards" (Abstract).

Appellant argues "there is no prior art suggestion to combine the parental lock flag of Stinebruner, which is used to prevent children from accessing objectionable Web sites, in the relied-upon table of Matthews, which presents, as 'virtual channels', only executable code sources for, e.g., executing an electronic program guide (EPG). Because an EPG is in effect an index of available stations but does not *typically* display content, objectionable or not, there is no reason to use the parental flag of Stinebruner in the virtual channel table of Matthews."

Appellant has incorrectly reduced Matthews to a typical electronic program guide (EPG), and with no substantiation makes the assertion that EPG's do not *typically* display content. The examiner strenuously disagrees. The abstract of Matthews (Lines 17-20) discloses the selection of a virtual channel, within a virtual channel table, and display of the associated program (Also see: Col 5, Lines 23-28). This is in direct

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contradiction to Appellant's assertion that no content is displayed. Stinebruner teaches parental lock flag in a virtual channel system (Col 5, Lines 49-55; Col 12, Lines 27-37). One of ordinary skill in the art would have recognized that it is advantageous to allow parents to control the content that the child accesses.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

With respect to the motivation to combine Breslauer with Matthews and Stinebruner, Appellant asks the question "[w]hy is any advantage presumably stating that Web sites are nice of any relevance to Matthews, except in hindsight of Claim 1?" While the examiner agrees that "Web sites are nice", this idea is not relied upon in the rejection. Matthews discloses a virtual channel correlation to online services (Col 2, Lines 32-37). Matthews fails to explicitly disclose that the online services are web sites. Breslauer teaches the use of web pages/sites in a multimedia access control system so as to prevent unauthorized access to inappropriate material from multiple sources (such as web sites) (See: Col 4, Lines 1-25, Col 8, Lines 20-28; Col 2, Lines 35-52). One of ordinary skill in the art would have recognized that it is advantageous prevent

unauthorized access to inappropriate material from multiple sources (such as web sites).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Although the rejection does not rely upon Stinebruner to teach the use of Web sites, it is noted that the Appellant conceded that the virtual channel system of Stinebruner teaches web sites. Appellant stated, "...the parental lock flag of Stinebruner, which is used to prevent children from accessing objectionable Web sites..."

(b) – Rejection using the combination of Matthews, III et al., Stinebruner, Breslauer et al.

Appellant states, "Matthews never even mentions the word 'telephone', much less does it suggest correlating a virtual channel with a telephone number." Appellant's specification states "[a]s shown in Table 1, the virtual channel number can be a number familiar to the content owner, e.g., the content owner's phone number" (Page 13).

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Matthews discloses the customization of the channel numbers, where the user is operable to change the number to a familiar number, as would include a telephone numbers. One of ordinary skill in the art would have recognized that the customization taught by Matthews would enable a user to label a channel with any number the user chooses, which would include a telephone number.

(c) – Rejection using the combination of Matthews, III et al., Breslauer et al. and Watson

As set forth in the rejection, Watson discloses a television usage system for charging a user based on actual usage contained in a billing record. Watson is not limiting to the type of information transmitted over the channel.

Appellant states, “relied-upon portion of Watson discusses recording when a user is tuned to a non-virtual channel, for billing for conventional cable TV channels. It does not relate to virtual channels, much less to Web site-based virtual channels.” Watson teaches creating a billing record based on subscriber usage, that in combination would result in recording the usage of a channel, regardless of the type of information (broadcast, web site, etc.) sent to the user. One of ordinary skill in the art would have recognized the advantage of the system of Watson enabling subscribers to be charged a fee based upon their actual usage rather than a flat rate.

Appellant state that claim 11 has been rejected without evidentiary support; however, the Appellant fails to adequately traverse the relied upon common knowledge statement. To adequately traverse such a finding, an applicant must specifically point

out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241.

(d) – Rejection using the combination of Matthews, III et al., Watson, and Linehan

Appellant states, “[t]he relied-upon references simply fail to teach or suggest billing the user for public sources and billing an entity associated with the content provider if the source is private.”

Matthews in combination with Watson clearly teaches billing the user for accessing “public sources”. Linehan teaches billing an entity associated with the content provider (i.e. the Merchant Located on the Web 170, Fig 2). When the viewer accesses a private site (i.e. a secure purchase) entity associated with the content is billed in order to increase revenue for the TV originators (See Paragraphs 0033, 0038-0039, 0063). One of ordinary skill in the art would have recognized the advantage of the system of Linehan enabling TV originators to increase revenues by billing content owners based on viewers accessing their web site via a secure purchase.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

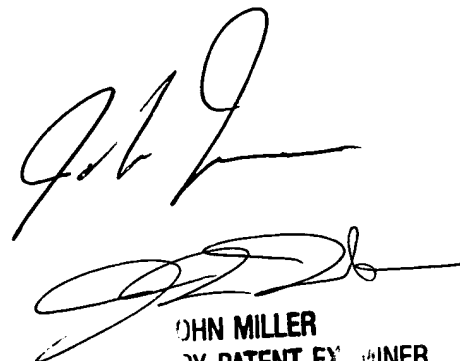
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